

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, January 18, 2023, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair Bill Huffman presiding, to consider the requests below:

Board members present were: Kevin McCann, (D2); Dale Rhodes (D3); and Bill Huffman, Chair, (D5).

Staff members present were: Becky Behl-Hill, Assistant County Attorney; Jeffrey Ball, Planning & Zoning Manager; Paul Body, Planner III; and Jennifer Jones, Special Projects Coordinator.

Bill Huffman called the meeting to order at 1:30 p.m.

Chair and Vice Chair Nominations

Motion by Kevin McCann, seconded by Bill Huffman, to appoint Dale Rhodes as Chair. The motion passed unanimously.

Motion by Kevin McCann, seconded by Dale Rhodes, to appoint Bill Huffman as Vice Chair. The motion passed unanimously.

Paul Body explained the function of the Board of Adjustment; Bill Huffman explained the definition of an undue hardship; and Dale Rhodes explained the procedures of the Board of Adjustment. All speakers were sworn in at the beginning of each item.

Approval of December 21, 2022, Minutes

Motion by Bill Huffman, seconded by Kevin McCann, to approve the December 21, 2022, minutes. The motion passed unanimously.

Susan E. Rice (Howard Benziger)

Variances from Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-2109(a), to permit a variance of 6.3 ft. over the maximum 6-ft. height limitation for a 306-ft. long retaining wall along the north property line; 2.) Section 62-2109(a), to permit a variance of 5 ft. over the maximum 6-ft. height limitation for a 163-ft. long retaining wall along the south property line, in an SEU (Suburban Estate Use) zoning classification. The property is 5.14 acres, located on the east and west sides of S. Tropical Trail, approx. 290 ft. south of Sanderling Rd. (5995 S. Tropical Trail, Merritt Island) (22V00037) (Tax Account 2605705) (District 2)

Howard Benziger, 996 Harbor Point Drive, Rockledge, stated he submitted the engineered drawings for the retaining wall at 8 feet high with no railing, the drawing was approved, and the wall was constructed. He stated the hardship is that a neighbor filed a complaint with Code Enforcement and now he is being asked to lower it, even after it was already approved and inspected. He said the height of the house is 2 feet lower than S. Tropical Trail, and only 3 feet higher than the residence to the north on the unfinished floor level. He stated there are severe drainage issues along the north property line because it all drains to his client's property. He said he doesn't mind installing a railing, but the plans for the wall were submitted, approved, and built to County specifications.

Susan Rice, 5995 S. Tropical Trail, Merritt Island, stated she is not opposed to moving the fence inside the property line, or the railing, so that the wall stays at the existing height.

Jeffrey Ball clarified that the applicant submitted a building permit for a single-family home, and as part of the revisions, it was included with the retaining wall. Zoning was not included in that review, so the wall was not approved by zoning, it was caught after was added to the existing building permit.

Dale Rhodes asked if the wall was added after the house was built. Mr. Ball replied it was added during the review of the permit for the house. Mr. Rhodes asked if the permit was approved with the wall added. Mr. Ball replied yes, but zoning was not part of the review, and that is why it was missed. Mr. Rhodes asked why zoning was not part of the review. Mr. Ball replied it was an operational error.

Mr. Rhodes asked about the railing. Mr. Ball replied it is part of the building code that when a wall is over a certain height, a railing is required for safety. Mr. Rhodes asked if the railing would have to be on the wall itself. Mr. Ball replied yes.

Kevin McCann stated he visited the property and looked at the wall. The requested variances are for walls along the north and south property lines, and asked if the wall that was approved with the permit was the one on the south or north property line. Mr. Benziger replied he was going to use the same wall on the north and south property lines, but after the south wall was done, the subcontractor wasn't available and he had to change it to a block wall and do a different engineering design so it would be a standard block retaining wall.

Mr. McCann asked the difference between the two walls. Mr. Benziger replied the north wall is a solid concrete-poured wall and it is the one that was submitted, inspected, and approved at 8 feet high with no railing. He said he duplicated it on the south but changed it to a block wall, but it ended up being about the same height as the wall on the north side because it was low on the property due to a ditch along the north property line.

Mr. McCann stated the north property line request is for a variance of 6.3 feet over the 6-foot maximum height, and asked if the wall will be 12.3 feet. Mr. Benziger replied the wall itself is 9.4 feet and he is adding a railing as an additional 3 feet on top of that. The drawing was approved at 8 feet with no railing, so he doesn't have a problem with the railing, it's the problem of now saying the wall is too high after it was approved per the drawing.

Mr. McCann asked if there are drainage issues in the neighborhood. Mr. Benziger replied the entire parcel to the north drains south, to his client's property, and in order for the wall to be even on the left and the right he had to raise the wall because the north side borders a ditch. He noted the wall is the same height as the other side, but it looks larger because of the ditch, and he measured from the ditch rather than from the level ground.

Mr. McCann asked if Mr. Benziger brought in fill dirt to raise the house. Mr. Benziger replied the property was at least 5 to 6 feet higher than the property to the north, and he did bring in fill dirt to raise the house.

Mr. McCann stated the stormwater is going to run from the house in all directions. Mr. Benziger replied the approved drainage plan has everything running away from the river, to the front, and then it disperses out the front. Mr. McCann stated the walls will actually serve to keep the stormwater off of the neighbors' properties. Mr. Benziger replied that is one of the main reasons to stabilize the fill and keep the water from running off the sides.

Bill Huffman stated on the survey the drainage arrow shows the water going away from the river to the east. Mr. Benziger stated the water runs south and picks up a 6-inch pipe that takes it from the swale in the back and brings it forward by the septic system; it does not go into the Indian River. Mr. Huffman asked where the water drains. Mr. Benziger replied it drains to the front property, which is

several hundred feet long. Mr. Huffman asked where the water goes from the front property, and if it drains into the pond. Mr. Benziger replied yes, it drains into the pond.

Mr. Huffman stated on the property to the north, the water drains to the south toward the subject property, and then there is an intervening ditch. Mr. Benziger stated according to the survey there is a ditch along the north side against the retaining wall. Mr. Huffman asked if the ditch drains into the pond. Mr. Benziger replied yes, it is on the neighbor's property.

Mr. Huffman asked if the concrete wall is a gravity wall that has an angle coming down, or if it is a wall with a foot that goes underneath the fill. Mr. Benziger replied the footer is 4 to 4.5 feet wide and the wall is sitting on the footer; it sits on the outside edge so that the dirt stays down and the wall can't roll.

Mr. Huffman stated on the finished grade, Mr. Benziger said the wall holds the property's water, and asked if it is 1-foot higher than finished grade at the top of the wall. Mr. Benziger replied he lowered the grade the best he could on the outside, and it's below the slab by at least 1.5 feet. Mr. Huffman asked if that wall is a little higher in order to maintain the water on his client's property. Mr. Benziger replied yes, it is a little higher on both sides. He noted the garage comes out on the north side, and the wall is up high enough to provide a curb stop so a car cannot go over the wall; it's about 8 inches high so that a tire cannot go up and over. Mr. Huffman asked, if he has to install a railing, will a bumper stop the car before the wheels ever get there. Mr. Benziger replied yes, that is the idea. Mr. Huffman asked the height of the railing. Mr. Benziger replied it will be 3 feet, the same as most residential balconies.

Mr. Rhodes asked if the change to a block wall instead of concrete wall was submitted and approved. Mr. Benziger replied yes. Mr. Rhodes asked at what height were the drawings submitted. Mr. Benziger replied he submitted at 8 feet, but when it was built, it was actually 9.4 feet, so it was 16 inches higher. Mr. Rhodes asked how it became 9.4 feet when it was approved as 8 feet. Mr. Benziger stated it was to get the wall up higher to stop a car with the curb. Mr. Rhodes asked if he made any submissions to Planning in regards to increasing the height of the wall from 8 feet to 9 feet. Mr. Benziger stated after the fact is when he was asked to get the drawing at the 9.4 foot-height which he submitted. Mr. Rhodes noted he had already built it at 9.4 feet when he was only approved for 8 feet, and asked who took it upon themselves to decide to go over by 1-foot what was approved. Mr. Benziger stated it got past him because they were trying to get it high enough to stop a car. Mr. Rhodes asked if Mr. Benziger knew it was going to be 9 feet. Mr. Benziger replied he didn't know until after the fact. Mr. Rhodes asked if the contractor knew it was only approved for 8 feet. Mr. Benziger replied he is the contractor, and he had masons go to the site, but they ran it higher.

Mr. Rhodes stated he would assume that as the contractor, Mr. Benziger checked the height, and it is challenging to say it was missed by 1.5 feet. Mr. Benziger replied he was up against a ditch and measuring it from the bottom of a ditch rather than on an established grade. Mr. Rhodes stated as a contractor Mr. Benziger should know the approved height.

Mr. Rhodes asked staff if the railing would still be required if the wall was 8 feet high instead of 9 feet. Paul Body replied the railing would be up to the Building Department, who requires it for safety. The Code states that the height of fences on parallel property lines shall be measured from the lowest grade of either of the property line.

Mr. Benziger noted the Code states anything over 30 inches high has to have a railing.

Mr. Rhodes asked if the second plan submitted as a revision was approved as 8 feet. Mr. Ball replied a building permit was submitted, and as part of the review a revision was added for the wall, and anything over 6 feet requires a variance. That was missed on the revision, and it was only after the fact that staff was notified that the plans included a retaining wall on both the north and south sides of the property.

Mr. Rhodes asked, when the plans were submitted, were the fences part of it, along with a revision. Mr. Ball replied no, not with the first submittal. Mr. Rhodes asked if it was when the revision came in that the problem was not caught. Mr. Ball replied yes.

Mr. Rhodes stated it is one thing to build a wall without any approvals, and another when a wall is built with approval, but when changes are made to what was approved then that brings in a third complication. He asked if Mr. Benziger went back for approval for 9 feet when he made that change. Mr. Benziger replied once it was caught that it was a 9 feet rather than 8 feet, he was asked to submit a drawing at 9.4 feet.

Mr. Huffman asked the type of railing that will be installed. Mr. Benziger replied it will be an aluminum picket rail like on any residential balcony. He stated per Code, once the wall and the dirt start get below 3 feet, the wall becomes the actual railing.

Public Comment:

Vinay Kumar, 145 Sanderling Road, Merritt Island, stated there is no difference between his property and the subject property. He said the contractor told him that the subject property was filled with approximately 250 loads of dirt. They brought in so much dirt that they now have to retain it and that is why they had to build the wall. He said he was told by Code Enforcement there was no permission to build above 6 feet and they should not be building the wall, and now they are asking for variances. He said there is no ditch, it is flat property, but there is a drainage easement if his property were ever subdivided into a 5-lot subdivision, but instead it is one property and there is no drainage ditch. He stated there is a drainage problem, and in one of the pictures submitted his property is flooded. The wall is unsightly, it is causing problems in the neighborhood, and should not be approved.

Mr. McCann asked if it was early in the construction stages that they brought in the fill dirt. Mr. Kumar replied, yes.

Mr. McCann stated there may not be a ditch, but there is a swale in between the two properties. Mr. Kumar stated he has planted plants on the side of his property and they are not in a ditch. He stated he never had flooding on his property until after Hurricane Ian, which was after the wall was built.

Mr. McCann asked the stage of completion of the applicant's house. Mr. Kumar replied it is probably 80% complete. Mr. McCann stated if the board doesn't grant the variances, the wall would have to come down, and the house would have to come down. Mr. Kumar said he doesn't think the house has to come down, the wall was built well after the house was constructed. The wall is 306 feet long, it is a visible obstruction, and with the addition of the railing it will be unsightly. The property is 5.4 acres and they could have put the garage right in front of the house on the side, there was no need to put it so close to the property line that now they don't have a way to get to it.

Mr. Kumar stated the other problem is the amount of drainage; they claim to have a pond, but for the last three years nothing has been done to help the drainage. He stated he understands that for 6 to 8 months there are inconveniences with construction such as noise and dust, and he is okay with that, but nothing has been done to help the drainage.

Mr. McCann asked Mr. Kumar's property is low. Mr. Kumar replied yes, his property is low, but he has three ponds for drainage. Mr. McCann asked if there were flooding problems in the area prior to the construction of the house on the subject property. Mr. Kumar replied there was not the flooding issue he has now.

Mr. Rhodes asked if Mr. Kumar talked to the contractor before the wall was built. Mr. Kumar replied yes, and he was told the wall would be tapered off on either side to look nice, but that was never done.

Mr. Rhodes asked Mr. McCann if fill was put underneath where the wall was built. Mr. McCann replied no, the wall is outside of the fill.

End of Public Comment.

Mr. Benziger stated the house is only 3 feet higher on the finished floor elevation than the house to the north, and it is 2 feet below S. Tropical Trail. He said as far as flooding, water is not running through a 300-foot wall; the wall is 55 feet from the edge of the water on the river, so it's not blocking the view of the river.

Ms. Rice stated she submitted pictures that show how dry her property is compared to Mr. Kumar's property. She said before her house was built, after Hurricane Irma, her neighbor's property was flooded for a month. She stated her property is high and comes downhill to the lake and then down to the river, and she added the fill to not be as low as the lake.

Mr. Rhodes asked if Mr. Benziger put in a pipe that drains the water. Mr. Benziger replied it is planned to be put in. He said the house is 90% complete, but until he figures out what is going on with the walls he cannot finish.

Mr. Huffman asked where the pipe will run. Mr. Benziger replied the drawing shows the pipe on the south rear corner, so everything will drain toward the south, away from Mr. Kumar's property, and it collects in a 6-inch pipe and taken due east toward the pond on the front of the property.

Mr. McCann stated only around the vicinity of the house is where the biggest issue is because the grade is higher, so the wall itself, as it extends from the house, either toward the road or toward the river, it is going to be a much higher wall, and asked if he is planning on having a railing the entire way, or just where it is needed. Mr. Benziger replied once the dirt drops below the top of the wall by 36 inches, the railing is not needed. Mr. McCann asked if it's not needed at the end of the wall towards the river, which would cause more obstruction for the neighbor, is there a reason to have the railing all the way down toward the river. Mr. Benziger replied no, once the dirt is dropped below that 36 inches at the top he is no longer required to have a railing.

Mr. Rhodes asked if Mr. Benziger plans running the railing the whole length of the wall. Mr. Benziger replied no, only wherever he has to meet Code.

Mr. McCann asked if a 9.4-foot wall is needed all the way toward the river when the water is really only needed to hold in the fill around the house. Ms. Rice replied she is looking at berming to prevent her water from going into the river, and the river from coming into her pool. She said there are a couple of trees there that she is going to build a coquina bowl around to help collect water and then the pipe will revert everything to the front.

Mr. McCann asked, in order to minimize any kind of potential obstruction to the neighbor's view, can the wall be lowered as it gets closer to the water. Mr. Benziger replied yes, there are two, 20-foot sections that he can start stepping down, the last 40 feet of the wall. Mr. McCann stated that might minimize the obstruction for the neighbor.

Mr. Rhodes asked if, as a contractor, can he assume Mr. Benziger knows maximum height for a fence is 6 feet. Mr. Benziger replied he was not aware of that, this is the first retaining wall he has built. Mr. Rhodes asked if Mr. Benziger has ever built a fence. Mr. Benziger replied he's had fences built by fence companies. Mr. Rhodes asked if there were any fences that were 6 feet high. Mr. Benziger replied yes, but he did not equate that with a retaining wall. Mr. Rhodes asked if Mr. Benziger didn't think a retaining wall would be limited to 6 feet, even though he knew 6 feet was the maximum for a fence. Mr. Benziger replied no, because he figured he needed 8 feet, he had it drawn, gave it to the County, and then got the drawing back approved at 8 feet without the railing.

Mr. Rhodes stated he exceeded the 8 feet at which he was given permission. Mr. Benziger replied it got past him. Mr. Rhodes noted it never went to zoning for review, so technically it didn't get approved, and asked if Mr. Benziger re-submitted. Mr. Benziger replied he was asked to re-submit for the 9.4-foot wall. Mr. Rhodes noted that was after it was caught and a complaint was made to Code Enforcement.

Mr. Rhodes asked the nature of the Code Enforcement action. Mr. Ball replied it is for a wall that exceeds the height requirements in the zoning code.

Motion by Kevin McCann, seconded by Bill Huffman, to approve the variances as depicted on the survey provided by the applicant.

Mr. McCann stated he visited the property, and it is a unique situation because the house is at least 7,000 square feet and built on a substantial amount of fill, and for flood it is appropriate to have the house built up. The property is higher on the road and higher by the water; it is almost a concave property, so it is going to collect water regardless, and where the house is built and how it's built it will be protected from flooding. He doesn't see any other option than to have the retaining wall hold in the fill and the water; without the wall, the fill would spill over and the flooding would be worse. He said for safety purposes the wall needs to stay and the railing needs to be put in where appropriate, but he would like to see the wall tapered down as it extends toward the water, to alleviate any obstruction issues the neighbors might be facing. He said he doesn't see any other option but to approve both variance requests; the walls cannot be taken down, the house is built and the fill is there, and all you can do is taper it down as it gets closer to the river and toward the street.

Mr. Rhodes asked if Mr. McCann believes it needs to be 9.4 feet, or if a 6-foot wall would suffice. Mr. McCann stated there still needs to be more fill brought in, once the fill is in there will be very little of the wall that is above ground.

Mr. Huffman stated his biggest concern is that he doesn't have a clear idea of the pre-condition and post-condition for drainage. He said he understands the wall and the channeling, and future construction is going to keep Ms. Rice's water on her property, but if the water was draining on to her property from the neighbor before, and now it isn't, the other person needs to take care of the drainage on their own property.

Mr. Rhodes asked staff, when plans are submitted of this nature, and the drainage comes into play because of the fence, is drainage taken into consideration, and does the applicant have to show the direction of the drainage. Mr. Body replied yes, drainage plans are reviewed by Natural Resources and Land Development. Mr. Rhodes asked if those reviews were done for this property. Mr. Body replied the reviews were included with the Building Permit.

Mr. Rhodes stated Mr. Benziger had approved plans and missed for an 8-foot wall, but ended up going to 9.4 feet. He said as contractors, they have to know where they are building and how high they are building. He stated he has concerns with the neighbor, where his house is versus the fence.

Mr. McCann stated Mr. Kumar's house sits further toward the river, so the houses are not side by side.

Mr. Rhodes stated the applicant is required to have a railing anywhere along the property where there is not 3 feet from the top of the wall down to the property, and asked if Mr. Kumar's property is almost at the top of the wall. Mr. McCann replied no, it is applicant's property that comes to the top of the wall, and that is why the railing is required. He said Mr. Kumar would only see the railing when looking at the house, not toward the water.

Mr. Rhodes stated he is concerned that the wall exceeds the height at which it was approved. Mr. McCann stated that is also his concern, but if the contractor made a mistake, the homeowner shouldn't be punished, because the homeowner would take a substantial hit because of that mistake when she was relying on the contractor. Mr. Rhodes stated it would be the responsibility of the contractor to incur the cost of the error.

Mr. McCann stated he doesn't want to decide on the contractor's mistake that's going to put the homeowner in substantial litigation, because she would be required to tear down the house because of the two walls. Mr. Rhodes asked why the house would need to be torn down. Mr. McCann replied because there is nothing else holding in the fill except for the wall.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variances.

Mr. McCann amended his motion to approve the variances as depicted on the survey provided by the applicant, and with the condition that the wall between the subject property and the property to the north taper down in height on the westerly 40 feet of the subject property. Mr. Huffman seconded the amended motion. The motion passed 2:1, with Dale Rhodes voting nay.

Brian Scott Hall and Kim Fischer

Variance of Chapter 62, Article VI, Brevard County Code, Section 62-1483(5)(a)(4)(a), to permit a variance of 10 ft. from the required 15-ft. side (east) setback adjacent to residential zoning for a building, in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The

property is 1.12 acres, located on the south side of S.R. 520, approx. 0.34 miles west of Lake Poinsett Rd. (No assigned address. In the Cocoa area.) (22V00046) (Tax Account 2444757) (District 1)

Kim Fischer, 1614 White Dove Drive, Winter Springs, Florida, stated she and her brother co-own a commercial property that abuts an unincorporated property owned by the City of Cocoa. There is a warehouse on the City's property that was built in the 1950's but it still has residential zoning with a commercial future land use. She said the zoning has never been changed to reflect the future land use or the building. If the zoning were changed on the abutting property it would be commercial and her setback would be 5 feet, and that is why she is asking for the 5-foot commercial-to-commercial setback instead of the residential setback.

Dale Rhodes asked for clarification from commercial setback versus the residential setback. Ms. Fischer stated her warehouse is proposed to be located on the east side, 5 feet from the property line, which is the setback when one commercial zoning abuts another commercial zoning, but to the east is a commercial building owned by the City of Cocoa with a residential zoning and a commercial future land use.

Paul Body explained that a commercial zoning classification has a 5-foot setback if it abuts another commercial property; if it abuts residentially-zoned property, a 15-foot setback is required.

Kevin McCann asked if Ms. Fischer's warehouse is built. Ms. Fischer replied no, she has submitted for review, and it wasn't caught in the first cycle, but it was caught in the revisions.

No public comment.

Motion by Bill Huffman, seconded by Kevin McCann, to approve the variance as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variances.

Dale Rhodes called for a vote on the motion as stated, and it passed unanimously.

River Fly-In Condominium, Inc. (Kim Rezanka)

A variance of Chapter 62, Article IX, Brevard County, Code, Section 62-3316(e)(a)(2), to permit a variance of 131 sq. ft. over the 24 sq. ft. permitted for a wall sign in a multi-family development, in a PUD (Planned Unit Development) zoning classification. The property is 13.03 acres, located on the south side of Cone Rd., approx. 150 ft. east of Kemp St.; and on the east side of Kemp St., approx. 145 ft. south of Cone Rd. (701 - 741 Pilot Lane, Merritt Island) (22V00049) (Tax Account 2501008) (District 2)

Kim Rezanka, Law Firm of Lacy, Lyons, Rezanka, 1290 U.S. Highway 1, Rockledge, stated the 13.03-acre property was rezoned to PUD (Planned Unit Development) in 2006, and it is a 10-story building with two levels of parking, a clubhouse, a pool, and other recreational amenities. [Ms. Rezanka provided a handout to the board. The handout can be found in file 22V00049, located in the Planning & Development Department.] She said the property is located south of Veterans Park, at the east end of Cone Road, and the proposed sign would face Kemp Street to the west. She stated

based on the sign Code, her client has 227 feet of frontage, but that doesn't apply to the property because it has multi-family zoning even though resort dwellings are a commercial use. She said the proposed size of the sign is 155 square feet, and because it is zoned PUD it has been given certain waivers to height, and wall signs are treated as freestanding signs, which is why the project is limited to 24 square feet. She said the reason for the requested variance of 24 feet from the sign code is that because at 24 feet no one will be able to see the sign, and the functions of signs are to identify where a business is located, to promote a business, and to give direction.

Bill Huffman asked on what side of the building the sign will be located. Ms. Rezanka replied it will be on the south building, facing west. Mr. Huffman noted the buildings to the west are zoned GML (Government Managed Lands). Ms. Rezanka replied yes, that property is owned by Brevard County Parks and Recreation.

Mr. Huffman asked, with the airport to the south and the signage facing west, why isn't there a sign facing south toward the airport. Ms. Rezanka replied the sign is also directional for people coming from State Road 520 and Courtenay Parkway.

No public comment.

Motion by Kevin McCann, seconded by Bill Huffman, to approve the variance as depicted on concept drawing 2A provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variances.

Dale Rhodes called for a vote on the motion as stated, and it passed unanimously.

Curtis William Charles Pacleb and Christina M. Bakken-Pacleb (Jonathan Lowman)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1446(d)(3)(a), to permit a variance of 2.7 ft. from the required 20-ft. rear setback for a principal structure, in a PUD (Planned Unit Development) zoning classification. The property is 0.29 acres, located on the easterly side of Pauma Valley Way, approx. 365 ft. northerly of Inverness Ave. (431 Pauma Valley Way, Melbourne) (22V00050) (Tax Account 2603971) (District 4)

Jon Lowman, 3900 Logan Lane, Melbourne, stated his clients are requesting a minimum variance of 2.7 feet from the rear property line because the home was built inside of a 20-foot setback bordering a retention pond on the property. He stated he hired a professional surveyor and noted to the surveyor that the setback needed to be 20 feet from the rear property line. It is not clear where the property line is because of the pond, and when the surveyor pinned the corners, he measured from the house and everything looked good on his end, so the house was built accordingly.

Dale Rhodes asked where the measurement comes from. Paul Body replied it is a platted lot with a platted rear property line, even though the water line may vary from the retention pond.

Mr. Rhodes asked if the house is built. Mr. Lowman replied yes. Mr. Rhodes asked if Mr. Lowman is saying the surveyor made an error in his survey. Mr. Lowman replied yes, he pinned it inside the setback, and after the foundation survey he said it was within the setback, but it was not.

Mr. Rhodes asked the surveyor's statement in regards to the encroachment. Mr. Lowman replied the surveyor said he laid it out per the plan, but he knew the setback was 20 feet, and there is an email that proves he was provided the setback requirements.

No public comment.

Motion by Bill Huffman, seconded by Kevin McCann, to approve the variance as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variances.

Dale Rhodes called for a vote on the motion as stated and passed unanimously.

Jamie and Heidi Nemeth

Variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334(5)(c)(3), to permit a variance of 0.25 ft. from the required 50-ft. rear setback for an accessory structure, in an AU (Agricultural Residential) zoning classification. The property is 2.69 acres, located on the south side of Huntington Ave., approx. 0.32 miles west of Dixie Way. (3425 Huntington Ave., Mims) (22V00051) (Tax Account 2005819) (District 1)

Jamie Nemeth, 3425 Huntington Avenue, Mims, stated the rear east corner of the barn is 3 inches inside of the 50-foot setback. He said it is possible he moved something when squaring everything, but it is 49.75 feet instead of 50 feet. He stated he wanted an accessory building in order to store a lawn mower, but because there is not a house on the property it had to be considered a barn, but once the house is built it will not be an issue because the setback will be 15 feet.

Jeffrey Ball noted typically this small of a variance would go through an administrative approval because it falls under 10%, but since the property is adjacent to State-owned land, it is nearly impossible to get them to sign off, and that is why the applicant needs a variance.

No public comment.

Mr. Rhodes asked if Mr. Nemeth read the letter of objection that was submitted, and if he intends to have farm animals. Mr. Nemeth replied yes, he read the letter, and the only farm animals he might have in the future are chickens.

Motion by Bill Huffman, seconded by Kevin McCann, to approve the variances as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variances.

Dale Rhodes called for a vote on the motion as stated and passed unanimously.

Upon consensus, the meeting adjourned at 3:38 p.m.